

**MINUTES OF THE MEETING OF
THE PARTNERSHIPS AND LIMITED LIABILITY COMPANIES COMMITTEE
OF THE BUSINESS LAW SECTION OF THE CALIFORNIA STATE BAR**

December 14, 2006

Ed Gartenberg, Chair of the Committee, called the meeting to order at 10:00 A.M. Members present were Ed Gartenberg, Chair, Eric Sternberger, Vice Chair, Brad Brigante, Charles McKee, and Brad Rogerson. Also present by invitation of the Chair were Alan Duboff, Executive Committee Liaison, and Derrick Britt, Corporations Committee Liaison.

I. Administrative Matters

- A. Ed Gartenberg introduced Charles McKee as the new Secretary of the Committee.
- B. Eric Sternberger gave a report on the Leadership Meeting of the Business Law Section, including the new technologies that are coming to the BLS and may be available to the committees in the near future.
- C. Alan Duboff gave a report from the Executive Committee.
- D. Derrick Britt gave a report from the Corporations Committee.
- E. Ed Gartenberg stated that the UCC Committee is interested in having a liaison, and asked any Committee member that may be interested in serving in such position to contact him.
- F. Ed Gartenberg announced that Committee meetings for the coming year would continue in the same time slot, the second Thursday of each month at 10:00 A.M.

II. Subcommittee Reports

- A. Publications Subcommittee.
 - 1. *CEB Selecting and Forming Business Entities*. Brad Rogerson is writing the chapter on general partnership, Ed Gartenberg the chapter on limited partnership, and Charles McKee the chapter on limited liability companies. Charles McKee has completed a draft of the chapter and asked members of the Committee to review the draft. Brad Rogerson and Eric Sternberger volunteered to review the draft.
 - 2. *Guide to Forming and Operating a Limited Partnership in California*. Ed Gartenberg announced that a project for the Committee this year is to revise and update this Guide since RERULPA has now been passed into law. Eric Sternberger agreed to hold Ed Gartenberg prepare an outline of the Guide to be discussed at the next Committee meeting. Each member of the Committee will prepare a portion of the Guide, so the resulting work is a product of the Committee and not just one or two people carrying the entire burden.

B. Legislation Subcommittee.

1. The Revised Uniform Limited Partnership Act (“RERULPA”) has been signed into law. Ed Gartenberg stated that it was too early to determine whether any clean up amendments would be needed. That is likely to be a project for next year.

2. NCCUSL Revised Uniform Limited Liability Company Act. Ed Gartenberg will find out the status of this proposed act.

3. Revised regulations from the Secretary of State regarding pre-clearance (2 Cal. Code Regs. §21904) and expedited filing (2 Cal. Code Regs. §21905) have been approved.

C. Webpage Subcommittee. Charles McKee will work on updating the Committee’s website.

III. Case Law Developments

A. Charles McKee reported on *Berti v. Santa Barbara Beach Properties* (Ct. of Appeal, B188216, November 27, 2006). Corp Code §15634 allows limited partners the right to inspect and copy partnership records. Section 15634(g) allows the limited partner to recover attorneys fees to enforce such rights when the partnership unjustifiably fails to comply with the statute. The *Berti* case holds that when a suit brought to enforce inspection rights is settled and a judgment entered on the settlement, post-judgment attorneys’ fees are available for motions brought to enforce the judgment.

B. Ed Gartenberg reported on *Ventis Finance I, LLC v. California Franchise Tax Board* (Superior Ct. CGC-05-44001). This trial court opinion held that the LLC total income fee is unconstitutional when an LLC has income from sources both inside and outside of California because the total income fee is not apportioned. The previous case of *Northwest Energetic Services, LLC*, which held unconstitutional the assessment of the total income fee on a foreign LLC that did not conduct any business in California, is on appeal.

IV. Membership

Ed Gartenberg stated that there are available positions on the Committee. He has several potential candidates in mind, but recommendations from other members on the Committee would be welcome.

V. Practice Issues

Brad Brigante asked whether any member could help him in the following situation. A two-member LLC (split 70:30) was dissolving. The operating agreement provided that liquidating distribution would be according to positive capital account balances. The minority member had taken improper and disproportionate distributions, such that his capital account balance was negative. How should the net assets be distributed? No member of the Committee could provide a definitive answer.

Adjournment

There being no further business to come before the Committee, Ed Gartenberg declared the meeting adjourned.

Charles E. McKee
Secretary